

Assembly Bill No. 856

Passed the Assembly September 13, 1997

Chief Clerk of the Assembly

Passed the Senate September 12, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to add Title 7.5 (commencing with Section 14020) to Part 4 of the Penal Code, relating to crime prevention, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 856, Hertzberg. Crime prevention: Witness Protection Program.

(1) Existing law prohibits intimidation of witnesses and establishes a Victim-Witness Assistance Fund as well as local assistance centers for victims and witnesses.

This bill would establish the Witness Protection Program and require that the program be administered by the Attorney General to provide for the relocation or other protection of a witness in a criminal proceeding where there is credible evidence, as defined, of substantial danger that the witness may suffer intimidation or retaliatory violence. The Attorney General would be authorized to enter into an agreement with the witness in accordance with specified terms.

The bill would provide that a witness selected by the Attorney General to receive services under the program because he or she has been or may be victimized due to the testimony he or she will give shall be deemed a victim.

The bill would appropriate \$3,000,000 from the Restitution Fund to the Attorney General for the purpose of implementing the program.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Title 7.5 (commencing with Section 14020) is added to Part 4 of the Penal Code, to read:



TITLE 7.5. THE HERTZBERG-LESLIE WITNESS
PROTECTION ACT

14020. There is hereby established the Witness Protection Program.

14021. As used in this title:

(a) “Witness” means any person who has been summoned, or is reasonably expected to be summoned, to testify in a criminal matter, including grand jury proceedings, for the people whether or not formal legal proceedings have been filed. Active or passive participation in the criminal matter does not disqualify an individual from being a witness. “Witness” may also apply to family, friends, or associates of the witness who are deemed by the Attorney General to be endangered.

(b) “Credible evidence” means evidence leading a reasonable person to believe that substantial reliability should be attached to the evidence.

(c) “Protection” means formal admission into a witness protection program established by this title memorialized by a written agreement between the Attorney General and the witness.

14022. The program shall be administered by the Attorney General. In any criminal proceeding within this state, when the action is brought by local prosecutors, where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services.

14023. The Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, and cases involving a high degree of risk to the witness. Special regard shall also be given to the elderly, the young, battered, victims of domestic violence, the infirm, the handicapped, and victims of hate incidents.

14024. The Attorney General shall coordinate the efforts of state and local agencies to secure witness protection services and then reimburse those state and local agencies for the costs of the services that he or she

determines to be necessary to protect a witness from bodily injury and otherwise to assure the health, safety, and welfare of the witness. The Attorney General may reimburse the state or local agencies that provide witnesses with any of the following:

- (a) Armed protection or escort by law enforcement officials or security personnel before, during, or subsequent to, legal proceedings.
- (b) Physical relocation to an alternate residence.
- (c) Housing expense.
- (d) Appropriate documents to establish a new identity.
- (e) Transportation or storage of personal possessions.
- (f) Basic living expenses, including, but not limited to, food, transportation, utility costs, and health care.
- (g) Other services as needed and approved by the Attorney General.

14025. The witness protection agreement shall be in writing, and shall specify the responsibilities of the protected person that establish the conditions for the Attorney General providing protection. The protected person shall agree to all of the following:

- (a) If a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings.
- (b) To refrain from committing any crime.
- (c) To take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this title.
- (d) To comply with legal obligations and civil judgments against that person.
- (e) To cooperate with all reasonable requests of officers and employees of this state who are providing protection under this title.
- (f) To designate another person to act as agent for the service of process.
- (g) To make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation.



(h) To disclose any probation or parole responsibilities, and if the person is on probation or parole.

(i) To regularly inform the appropriate program official of his or her activities and current address.

14025.5. The Attorney General shall not be liable for any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.

14026. Funds available to implement this title may be used for any of the following:

(a) To protect witnesses where credible evidence exists that they may be in substantial danger of intimidation or retaliatory violence because of their testimony.

(b) To provide temporary and permanent relocation of witnesses and provide for their transition and well-being into a safe and secure environment.

(c) To pay the costs of administering the program.

14026.5. For the purposes of this title, notwithstanding Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a witness, as defined in subdivision (a) of Section 14021, selected by the Attorney General to receive services under the program established pursuant to this title because he or she has been or may be victimized due to the testimony he or she will give, shall be deemed a victim.

14027. The Attorney General shall issue appropriate guidelines and may adopt regulations to implement this title. These guidelines shall include:

(a) A process whereby state and local agencies shall apply for reimbursement of the costs of providing witness protection services.

(b) An appropriate level for the match that shall be made by local agencies. The Attorney General may also establish a process through which to waive the required local match when appropriate.

14028. The State of California, the counties and cities within the state, and their respective officers and

employees shall have immunity from civil liability for any decision declining or revoking protection to a witness under this title.

14029. All information relating to any witness participating in the program established pursuant to this title shall remain confidential and is not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

14030. (a) The Attorney General shall establish a liaison with the United States Marshal's office in order to facilitate the legal processes over which the federal government has sole authority, including, but not limited to, those processes included in Section 14024. The liaison shall coordinate all requests for federal assistance relating to witness protection as established by this title.

(b) The Attorney General shall pursue all federal sources that may be available for implementing this program. For that purpose, the Attorney General shall establish a liaison with the United States Department of Justice.

(c) The Attorney General with the Board of Control shall establish procedures to maximize federal funds for witness protection services.

14031. Commencing one year after the effective date of this title, the Attorney General shall make an annual report to the Legislature no later than January 1 on the fiscal and operational status of the program.

14032. The administrative costs of the Attorney General for the purposes of administering this title shall be limited to 5 percent of all costs incurred pursuant to this title.

14033. (a) The Governor's budget shall specify the estimated amount in the Restitution Fund that is in excess of the amount needed to pay claims pursuant to Sections 13960 to 13965, inclusive, of the Government Code, to pay administrative costs for increasing restitution funds, and to maintain a prudent reserve.

(b) It is the intent of the Legislature that, notwithstanding Government Code Section 13967, in the

annual Budget Act, funds be appropriated to the Attorney General from those funds that are in excess of the amount specified pursuant to subdivision (a) for the purposes of this title.

SEC. 2. The sum of three million dollars (\$3,000,000) is hereby appropriated from the Restitution Fund to the Attorney General for the purpose of implementing Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code, as added by Section 1 of this act.



Approved _____, 1997

Governor

